

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, May 1, 2018  
**Time:** 6:00 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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### CALL TO ORDER

Mayor Tran called the joint meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo, Nuñez and Phan

**ABSENT:** None

### CLOSED SESSION

City Council convened in Closed Session to discuss litigation and matters listed on the agenda. City Attorney Diaz stated the Mayor recused himself from item (b) on the Closed Session agenda.

City Council then convened in Open Session at 7:11 PM with all members present.

### ANNOUNCEMENT

City Attorney Chris Diaz stated there was no reportable action out of Closed Session.

### PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

### INVOCATION

Mayor Tran offered a prayer to start the meeting.

### PRESENTATION

Mayor Tran proclaimed the month of May to be *Mental Health Month* and *Building Safety Month*. The former was accepted by Mr. Sean Peterson from San Jose Behavioral Health and the latter by Acting Building Director Gary King with five Building Department staff.

The Mayor also proclaimed May 8-13, 2018 as *Economic Development Week*, accepted by the General Manager and Marketing Director from The Great Mall of Milpitas along with city Economic Development staff.

### PUBLIC FORUM

Voltaire Montemayor, Milpitas resident, commented on a need to detect the mind's mental health problems, or any problems with a building. He liked going to the Great Mall. He was detecting earthquakes, and need to save lives, per a new instrument invented.

Robin Hayes, Milpitas resident and Chair of the Arts Commission, heard that the Commission may be rolled into the PRCRC (Parks, Recreation and Cultural Resources Commission). There needed to be more art to enhance the city. Everyone could have a more pleasant experience with art pieces on major gateway roads into the City. More art in newer developments should be included and completed. She urged Council to consider providing yearly funds to put in more pieces of art in the City since funds were reduced after Redevelopment went away.

Councilmember Nuñez responded to her and commented about a sign at a Rotten Robbie's location, about which he'd like to have a report back to Council.

Robert Marini, Milpitas resident, saw a difference in the amount of water, by HCF, on something he'd read. He displayed a chart overhead of Potable Water Demand Project and then discussed water mixing from two sources and their meters that provide water to the City of Milpitas.

Rob Means, 1421 Yellowstone Ave. resident, referred to a standard payment for water, no matter how much was used. He commented further about the mix of water sources.

Tom Valore, Milpitas resident, requested that item no. 11 (Agreement with consultant for MidTown Plan update) be pulled from consent. Water was not mixed, he stated (in reply to Mr. Means).

## **ANNOUNCEMENTS**

Councilmember Nuñez reported about a Committee (Ad Hoc South Flow Arrivals) he served on. That group studied the adding of additional flights to SJO and SFO, while looking at height of flights and weather conditions. More would be pushed towards Milpitas in those plans, but the City of Milpitas convinced the Committee not to allow additional flights over this City so that extra noise would be avoided. He commended staff Renee Lorentzen and Chris Diaz for their hard work and efforts on this positive outcome.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as submitted

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Mayor Tran requested agenda items numbered 1 – 10 (removing item no. 11), and 12 – 15 to be placed onto consent.

Vice Mayor Grilli asked to move item no. 18 onto consent.

Councilmember Nuñez asked to remove item no. 15 from consent.

Councilmember Barbadillo asked to remove item no. 14 from consent.

Councilmember Phan requested to add item no. 21 onto consent.

Motion: to approve the Consent Calendar, including agenda items numbered 1 – 10, 12, 13, 18 and 21

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

- \* 1. Council Calendar Accepted City Council calendar for May 2018.
- \* 2. Meeting Minutes Approved City Council meeting minutes of April 10 and 17, 2018.
- \* 3. Financial Report Received the financial status report for nine months ended March 31, 2018.
- \* 4. Investment Status Received the investment report for the quarter ended March 31, 2018.
- \* 5. Co. EMS Grant Accepted \$50,830.30 in funds from the Santa Clara County EMS Fund and approved a budget appropriation into the Fire Department's budget.
- \* 6. Letter to BAAQMD Authorized a letter from the City Manager to Bay Area Air Quality Management District supporting Silicon Valley Clean Energy's proposal in response to the 2018 Climate Protection Grant Program.



Motion: to approve and authorize the City Manager to execute an agreement with David J. Powers & Associates in the amount of \$68,843 for the Well Upgrade, Project No. 7076 (McCandless Well) and the Lower Penitencia Creek Pedestrian Bridge Project No. 2005

Motion/Second:

Councilmember Barbadillo/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

**15. Re-Bid Amendment No. 3  
with HMH Inc.**

City Engineer Steve Erickson described the status of bids received for the agreement for services on the MidTown Street Light and Utility Underground project. Due to the bids that came in at a price that was much too high versus the City engineer's estimate, the request from staff was to go out anew for bids, after making some adjustments.

Councilmember Nuñez urged, before awarding any final bid, to keep in mind the MidTown Specific Plan update that would be done (discussed earlier).

Mayor Tran invited comment from the audience.

Voltaire Montemayor, Milpitas resident, remarked on the high bid and agreed with the Engineer.

Motion: to reject all bids, authorize staff to repackage and re-advertise the project for Midtown Street Light Project No. 3430 bids; and, to authorize City Manager to approve Amendment No. 3 to the Consulting Services Agreement with HMH, Inc. in the amount of \$24,900 for the Midtown Street Light and Utility Underground 2017, Projects No. 3430 and No. 3425

Motion/Second:

Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 5

NOES: 0

**PUBLIC HEARING**

**16. 1301 California Circle  
hotel project**

Planning Director Brad Misner introduced the request for action on a proposed new hotel, a Home2Suites Hotel by Hilton. Planner Michael Fossatti presented the project to the Council, seeking a site development permit, conditional use permit including request to allow a height increase, tentative parcel map, a Planned Unit Development amendment and environmental assessment. Mr. Fossatti described major details of the future hotel at 1301 California Circle.

Mayor Tran welcomed the Patel family, applicants for the hotel, and invited them to the podium. The family already owned another hotel in Milpitas on Barber Lane. They own a Home2Suites in Livermore, and hoped for success with a new one coming to Milpitas.

Mayor Tran opened the public hearing.

Voltaire Montemayor, Milpitas resident, said the City had nothing to lose. This project will be good and he agreed with the project.

Rob Means, 1421 Yellowstone resident, was concerned if the building was not energy efficient, over the long term of the life of the building. There was not a strong green-building ordinance and he had concern for global warming.

Applicant Mr. Patel responded to Mr. Means describing the features of the hotel that were energy conserving. Mr. Patel spoke of state requirements for green features, including solar panels on the hotel that would be installed.

Motion: to close the public hearing, following two speakers

Motion/Second:

Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

Mayor Tran thanked the Patel family for bringing this hotel project, which he supported. It would be an improvement on this parcel at California Circle, next to 880.

Councilmember Nuñez inquired about traffic at the site. He asked at what point all the travel trips together for all the new developments (residential and hotels) would generate some review or change. Planning staff responded to him about traffic and overall city patterns. Mr. Nuñez wanted to make sure it was safe for pedestrians and a person in a wheelchair. He next inquired about long-term stays and concern for collection of Transient Occupancy Tax (TOT). Mr. Misner replied that hotel stays were limited to a maximum of 30 days.

Vice Mayor Grilli asked for the projected time for construction and opening. Staff estimated 18 months while the applicant felt it would be 15 months to open. She asked about public art for the project and staff said the applicant could either select a piece of art or pay the fee.

Councilmember Barbadillo saw in the Planning Commission meeting minutes that there was some concern about alcohol sales at the hotel. Mr. Fossatti responded about the type of alcohol license to be issued which limited sale of alcohol to items guests would carry to their rooms.

Councilmember Nuñez wanted to confirm timing of the process as to when signal lights, where appropriate, were installed and staff explained.

Councilmember Phan shared similar concerns to Councilmember Nuñez while he supported the project.

Motion: to adopt Resolution No. 8769 approving the Site Development Permit (SD16-0003), Conditional Use Permit (UP16-0018), Planned Unit Development Amendment (PA18-0001), Tentative Parcel Map (TP16-0002), and Environmental Assessment (EA17-0004) approving the subdivision of a 6.34 acre site into two parcels, and the construction of a 150-room, 62' 5" tall hotel at 1301 California Circle (Home2 Suites hotel by Hilton)

Per recommendation of City Attorney Chris Diaz, staff would add the condition of approval regarding 30 day maximum stays, with check-in check-out required; and, he would add language to Condition No. 12 on indemnity, as it required legal clarification.

Motion/Second:

Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

## UNFINISHED BUSINESS

### 17. Update on Proposed Budget

Finance Director Will Fuentes provided an update to the Council on the proposed Fiscal Year 2018-19 budget, based on input received from Council at study sessions on the budget and CIP. He reviewed steps taken toward the upcoming new budget over the past year. Police Chief Armando Corpuz came forward to describe ongoing recruitment efforts to fill vacancies for the position of Police Officer. Mayor Tran complimented him on quality hires coming in to the Milpitas Police Department.

Mr. Fuentes displayed and explained six specific items that were requested by the Council on April 10, when discussing how to disburse more than \$681,000.

Mayor Tran thought folks would be upset at the cost for a Community Outreach position (on the list) and what the position would do. City Manager Julie Edmonds-Mares responded by describing the outreach efforts to the diverse Milpitas community, and to have a person who was

culturally competent. Recreation Director Renee Lorentzen described what the position might do for the City, by attending community meetings, providing material in various languages, and use of social media to reach elements of the community who may not have been involved with city government. Mayor Tran said he did not like the job title “Administrator.”

Mayor Tran asked Ms. Lorentzen to explain the Youth Job Program proposed. She explained that it would be modeled on Oxnard’s. Funds were needed to pay youth involved in the planned program.

Mayor Tran asked for an explanation of the funding for another item, the “Class and Comp Study” (classification and compensation), as the largest dollar item on the list (\$472,000). The City Manager explained that item was to bring the rate of pay for some employees who were below market (based on a study done in the past) to be paid at the median level.

Vice Mayor Grilli clarified that the money was for the implementation of the Class and Comp study, which was already done in the past. She was pleased with the list staff brought.

Councilmember Phan addressed the Mayor and his comments about the Community Outreach Administrator position. He asked if there could be a public-private partnership to raise additional funds for this purpose. The City Manager replied yes, the city could fundraise for this program, which was considered a pilot program to start.

Councilmember Nuñez asked for an explanation of a Senior Shuttle program proposed at \$30,000. Ms. Lorentzen said those funds would cover a driver for the next fiscal year, in the first year, using a brand new van the Recreation Services Department recently acquired. Mr. Nuñez encouraged grant funding for which the City could apply.

Acting Fire Chief Rick Frawley explained anticipation of SAFER grant funds were to pay for four new firefighting personnel. The grant would fund 75% of the costs of new firefighters in the first year. Councilmember Nuñez asked for some confirmation that after the third year of these new firefighters, that the City would not have any concerns with funding those needed positions, after use of the “starter dollars” as he termed the SAFER grant.

Vice Mayor Grilli asked if the City already had a SAFER grant and the Fire Chief said no. She asked about General Fund Reserves and amount required, and the amount existing in that line.

City Engineer Steve Erickson reviewed the proposed 2018-23 Capital Improvement Program changes, based on a past study session on FY 2018-2023 CIP. Staff had moved up the restroom/snack shack renovation at the Sports Center playing fields area to happen at the same time as the Skate Park project currently under design.

City Manager Edmonds-Mares reviewed a 5-Year General Fund forecast, displaying anticipated deficits in the coming years when expenditures were predicted to be more than revenues. Therefore, some potential ballot measures for funding could help with those fiscal impacts to the city. For example, one measure could be asking voters to approve an increase in the TOT hotel tax.

Mayor Tran next asked for public comments.

Kelly Yip-Chuan, Milpitas resident and Chamber member, said she was a parent of three kids. She supported funding for a teen and youth center in Milpitas, as recommended. For the Milpitas Chamber, she would like to have the City consider some funding in the budget to assist the Chamber, maybe for a Welcome Center.

Voltaire Montemayor, Milpitas resident, knew it was a tough job to prepare this budget. He spoke of positions added to the City workforce.

Tom Valore, Milpitas resident, was confused with concern on some of what he saw. He presumed that income the City would receive would continue to go up. So, plan on what to do to

ride out a downturn in the economy. There was a need to set aside some for a “rainy day” fund for the City.

Vice Mayor Grilli thanked the City Manager and Finance Director for guiding the Council through this process.

Motion: to approve and direct staff to include the changes described in the proposed Fiscal Year 2018-19 budget and 2018-23 CIP, and support the reserves fund as described

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORT OF OFFICERS

Item was moved to consent.

\*18. Council Subcommittee on Cannabis

Received written report (on Council agenda) from the City Council Subcommittee on Cannabis.

## NEW BUSINESS

19. Potential Ballot Measures for November 6, 2018

Economic Development Director Edesa Bitbadal presented options for the City Council to consider to place potential ballot measures on the November 6, 2018 election ballot in order to increase General Fund revenue in the future.

Three topics revenue-related were: Transient Occupancy Tax (TOT), Cannabis Use tax and Business License tax increase. Mayor Tran asked why this was proposed at this meeting and not in the past? Staff explained it was a great time to do so while the economy was busy, and with lots of business to business activity.

Councilmember Nuñez asked what the City of Fremont was doing on the TOT issue and Ms. Bitbadal responded, no change proposed.

One measure also to consider was not revenue related, but was requested by the Mayor to be considered. Voters could consider a change in the term for the city’s Mayor to change from two to four years.

Councilmember asked about polling voters on these issues, including a 12% or 14% TOT. Ms. Bitbadal invited the pollster from the FM3 firm to respond on how that could be done.

Ms. Lorentzen spoke to the Council about a possible Cannabis Sales Tax. While City Council had not yet established any policy about such businesses, the possible tax on the use of marijuana products in Milpitas could be considered by voters, if the Council determined those uses later. She explained also that staff urged polling in order to get a response on whether this was favorable or not, having this topic on the ballot.

Councilmember Barbadillo asked about other cities that allowed cannabis sales. Staff said 22 cities allowed sales, and listed nearby cities considering allowing and taxing it. Mr. Barbadillo wanted to know if there was enough time to determine if there would be enough support for this tax measure. He asked more questions of the consultant and how deep the polling would be on the four items. There was no urgency on this topic, he felt. The City needed to study, consider tax revenue, impact of uses and what was occurring in other cities. He emphasized getting more data.

Councilmember Nuñez commented on cannabis uses and he’d visited different cities to see cannabis stores, and spoke to a director of cannabis at the state level. He’d heard presentations on this topic several times this year, and was gathering a great deal of information on it.

The Economic Development Director next explained a possible Business License Tax modernization. This fee/tax had not been adjusted in Milpitas since 1976. If approved, it could generate an additional \$1.3 - \$2.3 million more revenue if a new fee structure was approved and implemented. She showed a chart of other cities and their business license tax revenues.

Mayor Tran called for public comments.

Tina Broyles, Milpitas resident, business owner and representing Milpitas Chamber of Commerce, felt this business license increase was pretty substantial with many other service cost increases recently. She and others would want to know how the increase would impact the business community, especially new ones and urged Council not to hurt businesses.

Mayor Tran wanted to understand more of the cost impact, especially to smaller businesses.

Councilmember Nuñez said he had at least two businesses in Milpitas, so he would be affected. He asked if the tax was the same for small business as for Cisco. Ms. Bitbadal explained the current fee structure, and Mr. Fuentes further detailed it and how they could increase. Mr. Nuñez cared to find out what the impact was going to be on businesses, while staff explained that voters would be surveyed.

The FM3 consultant responded about such surveying, which was possible, but was a different survey than one of voters for a ballot measure. The Chamber could be involved.

Councilmember Phan asked the City Manager about the recent experience of San Jose, and the effort to modernize business license tax in San Jose. One type of proposal was put forward and then the methodology changed and the business community was involved as well.

Finance Director Fuentes described the Mayoral Term topic as another one to potentially poll voters on. This would be to consider changing the Mayor's term from a two-year to a four-year term of office. If approved by voters, this change would impact future Mayors (not the current one). He also defined the current term limits on elected officials in Milpitas.

Mayor Tran responded stating he was the one who asked for the Mayor's term change item to be polled and to consider changing term limits to be shorter. People were clamoring for these changes. He wanted there to be a lifetime term limit of two terms, eight years total. He would like the Mayor's term to be for four years.

Councilmember Nuñez commented on the Mayor's request. Milpitas had a directly elected Mayor. Consider the size of this city versus others, where the Mayor was selected from among five elected Councilmembers selected by rotation style. He would want to survey for that.

Mayor Tran felt that three four-year terms was too long and too much for Councilmembers. It could be cut to eight years lifetime, he urged.

Vice Mayor Grilli was in favor of five Councilmembers serving four-years. The Mayor did not really hold any special powers. Term limits as they stand, with 12 years total for Council members, was okay with her. Ms. Grilli felt past Milpitas leaders served the city well over time and would like to poll on this.

Councilmember Barbadillo felt the system the city had was working. He said to change only if there was enough reason to change it. Terms were okay as established with checks and balances.

Councilmember Nuñez said staff could go out and poll on the three items that had dollars connected to them. He asked the consultant how he would poll voters on this topic (different from tax). He went down the list on which ones he supported to poll voters on.

Vice Mayor Grilli liked what Mr. Barbadillo had said, about what was working. She wanted to hear what voters said on the first three items (tax related) and to poll voters on those.



Councilmember Phan commented that voters could bring an initiative if they wanted to consider a change in the Mayor's term or term limits.

Next, Mayor Tran called for public comments.

Sharu, resident, congratulated the City on giving a chance to people for democratic action. Poll the people of the city to let the people decide on these issues, including on cannabis.

The City Council then moved to a series of votes, distinct on each of four topics, to determine whether to consider polling voters. Vice Mayor Grilli made a motion to conduct polling on items 1, 2 and 3; however, Councilmember Barbadillo wanted to vote on each one separately. Votes proceeded as follows.

(1) Motion: to poll Milpitas voters on potential increase in the Transient Occupancy Tax

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

(2) Motion: to poll Milpitas voters on a potential tax on cannabis

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 4  
NOES: 1 (Barbadillo)

(3) Motion: to poll Milpitas voters on potential change to the structure for Business License fee (tax) to yield an increase in revenue to the City

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

(4) Regarding possible polling on length of the Mayor's term and on the elected officials' term limits, the Mayor made a motion to request polling voters. It died for lack a second.

## ORDINANCE

**20.** Ordinance No. 289.2 for City Manager's Contract Authority

City Attorney Chris Diaz read aloud the title of Ordinance No. 289.2, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 2 and Chapter 4 of Title I of the Milpitas Municipal Code Relating to Purchasing and Contract Authority."

Motion: to waive the first reading beyond the title and introduce Ordinance No. 289.2 to amend the level of the City Manager's contract signing authority up to \$100,000

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5  
NOES: 0

## AGREEMENT

Item was added to consent.

\*21. Amendment No. 2 to Agreement with West Yost Associates

Approved and authorized the City Manager to execute Amendment No. 2 to the Agreement with West Yost Associates for Project No. 7076, extending the term and increasing the amount of the cost of the agreement by \$1,599,045.

**REPORTS FROM MAYOR & COUNCIL**    None

**ADJOURNMENT**                      Mayor Tran adjourned the meeting at 12:22 AM on Wednesday, May 2, 2018.

**The foregoing minutes were approved by Milpitas City Council on May 15, 2018.**

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**Mary Lavelle**  
**Milpitas City Clerk**